

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16536 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BANSILAL CHHATRAJI CHAUHAN (MARWADI)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16536 of 2003
M/S THAKKAR ASSOC. for Petitioner No. 1
MS PAUAMI SHETH LD. AGP for Respondent No. 1-3
MS PJ DAVAWALA for Respondent No. 4
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CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 28/01/2004

ORAL JUDGEMENT

1. Ms.Paurami Sheth, learned AGP for respondent no.1

and Ms.P.J.Davawala, learned Additional Counsel for the Central Government have placed on record the affidavit in reply for respondent nos.1 and 4 respectively. Both are kept on record.

It is stated by Mr.N.K.Pahwah, learned advocate for the petitioner that no rejoinder to either of the affidavits in reply is to be filed.

2. By this petition under Article 226 of the Constitution of India, the petitioner has been challenging the order of detention dated 14.10.2003 passed by respondent no.2 in exercise of the powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,1980.

3. The order of detention in question has been challenged on the ground of delay viz. passing of the detention order after 3 and 1/2 months of the inspection of the essential article by the authority concerned and the detention of the petitioner by the respondent authorities. It is contended by Mr.Pahwah that the detention order has been passed after a delay of 3 and 1/2 months and that no explanation has been rendered by the authority for the delay caused in passing the detention order.

It has been further submitted by Mr.Pahwah that co-detenu has been enlarged by this Court. Mr.Pahwah has placed on record the copy of the order rendered in Special Civil Application No.15443 of 2003 passed by this Court.

4. In the case of Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and Others, reported in AIR 1994 SC 656 while dealing with the case under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act (55 of 1981), it has been observed by the Apex Court that the order of detention passed under Section 3(1) of the Act on the basis of some criminal cases registered against the detenu and also on the basis of statements of witnesses, recorded after 5 months and 8 days from the registration of last case and more than 4 months from submission of proposal / statement of witnesses referred to in grounds of detention obtained after detenu was released on bail, the order of detention was liable to be set aside on the ground of delay.

4. In the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Others, 1997

(1) GLH 381, it has been observed in Para.21 "there appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself."

5. In the instant case also, there is unexplained delay of 3 and 1/2 months in passing the detention order after the inspection of the questionable material found from the custody / possession of the detenu. By the reason of parity, the present petition also would be required to be allowed by quashing the detention order since the co-detenu on the same set of allegation has been released and his detention order quashed by this Court in Special Civil Application No. 15443 of 2003.

6. In view of the above, the petition is granted. The impugned order of detention dated 14.10.2003 passed against the petitioner detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi, J.)

(vipul)